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# Decision

**Matter of:** MIRACORP, Inc.

**File:** B-416917

**Date:** January 2, 2019

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Heather Weiner, Esq., and Jennifer D. Westfall-McGrail, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

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## DIGEST

Protester is not an interested party to challenge issuance of a delivery order set aside for participants in the Small Business Administration's 8(a) program where the delivery order was issued under a multiple-award contract not initially set aside for 8(a) competition, and where the protester had graduated from the 8(a) program, and therefore, was not an 8(a) program participant eligible for award on the date specified in the solicitation for receipt of quotations.

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## DECISION

MIRACORP, Inc., a small business located in Gilbert, Arizona, protests the issuance of a delivery order to RiVidium, Inc., an 8(a) small business located in Manassas, Virginia, under request for quotations (RFQ) No. 89503118RWA000008, issued by the Department of Energy (DOE), for administrative support services. MIRACORP, which is the incumbent contractor for the requirement, challenges the agency's evaluation and award decision.

We dismiss the protest on the basis that the protester is not an interested party to challenge the order.

## BACKGROUND

On July 20, 2018, DOE issued the solicitation, which was set aside for Small Business Administration (SBA) 8(a) business development (BD) program participants, and limited to holders of General Services Administration (GSA) Federal Supply Schedule (FSS) Professional Services Schedule (PSS) contracts. RFQ at 1, 8. The RFQ anticipated the issuance of a single, fixed-price delivery order to the vendor whose quotation was found to offer the best value to the government. RFQ at 13.

The agency received quotations from eight vendors, including RiVidium and MIRACORP, by the closing date of August 21, 2018. Protest, exh. A, Agency Award Notice, at 1; DOE Submission, Oct. 16, 2018, at 2. At that time, as relevant here, although MIRACORP held a PSS contract, the company had graduated from the 8(a) program on February 22, 2017. DOE Update, attach. 1, MIRACORP SBA Profile, at 2; attach. 2, MIRACORP PSS Contract, at 1.

On September 26, DOE notified MIRACORP of its decision to issue the task order to RiVidium. Protest, exh. A, Award Notice, at 1. This protest followed.

## DISCUSSION

MIRACORP challenges DOE's evaluation of its and the awardee's quotations, and argues that the agency's source selection determination was unreasonable. DOE and the intervenor argue that, under our Office's bid protest regulations, MIRACORP does not qualify as an interested party. Specifically, DOE and RiVidium contend that, because the RFQ was set aside for 8(a) program participants, and the protester had graduated from the 8(a) program at the time quotations were due, MIRACORP was not an 8(a) firm eligible to receive the order, and therefore, is not an interested party to challenge the agency's evaluation and award decision under the RFQ. For the reasons discussed below, we conclude that the protester is not an interested party and dismiss the protest on this basis.

MIRACORP acknowledges that the solicitation was restricted to 8(a) program participants. Protest at 3-4. MIRACORP also acknowledges that it graduated from the 8(a) program on February 22, 2017. Protester's Reply (Oct. 15, 2018), at 5. The protester asserts, however, that it retains its 8(a) status, despite graduating from the program, because it was an 8(a) firm at the time it was initially awarded its PSS contract. In this regard, the protester interprets pertinent SBA guidance as indicating that a firm that has graduated from the 8(a) program remains eligible to receive a task order (or delivery order) set aside for 8(a) firms as long as the vendor was an active 8(a) participant when the original GSA schedule contract was awarded to the vendor.

Section 8(a) of the Small Business Act authorizes SBA to enter into contracts with government agencies and to arrange for performance of such contracts by awarding subcontracts to socially and economically disadvantaged small businesses. 15 U.S.C. § 637(a). SBA has implemented the Act's statutory provisions in regulations, which

provide, as relevant here and in pertinent part, that: “In order for an order issued to an 8(a) Participant and placed against a Multiple Award Contract to be considered an 8(a) award, where the Multiple Award contract was not initially set-aside, partially set-aside, or reserved for exclusive competition among 8(a) Participants, . . . SBA must verify that a concern is an eligible 8(a) concern prior to award of the order in accordance with § 124.507.”<sup>1</sup> 13 C.F.R. § 124.503(h)(2).

At our Office’s invitation, SBA provided its views on this protest. As a general matter, we accord SBA’s interpretations of regulations it promulgates, such as those regarding the 8(a) program, great weight. Singleton Enters.-GMT Mech., A Joint Venture, B-310552, Jan. 10, 2008, 2008 CPD ¶ 16 at 3.

SBA’s position is that, because the PSS contract at issue here was not initially set aside for 8(a) competition,<sup>2</sup> any order under that contract that is competed exclusively among 8(a) concerns, only can be awarded to a firm that SBA has verified as being an eligible 8(a) concern. 13 C.F.R. § 124.503(h)(2); SBA Comments at 1. Specifically, SBA explains that, to be an eligible 8(a) concern, the firm must be a current 8(a) participant as of the date specified for receipt of offers contained in the request for quotations for the order. 74 Fed. Reg. 55694, 55704 (Oct. 28, 2009); SBA Comments at 1. The SBA asserts that its position is consistent with FAR § 19.804-6(a), which includes a requirement for SBA to verify the eligibility of an awardee for an 8(a) set-aside order. See FAR § 19.804-6(a) (“[O]ffers and acceptances are required for individual orders under multiple-award contracts that have not been set aside for exclusive competition among 8(a) contractors.”). In addition, SBA notes that the RFQ included FAR clause 52.219-18, “Notification of Competition Limited to Eligible 8(a) Participants,” which provides that “[o]ffers are solicited only from small business concerns expressly certified by the Small Business Administration (SBA) for participation in the SBA’s 8(a) Program and which meet the following criteria at the time of submission of offer[.]” Accordingly, SBA maintains that, because MIRACORP was not an 8(a) participant on the date specified in the RFQ for receipt of quotations, the protester is not eligible to receive the order, and therefore, not an interested party. We agree.

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<sup>1</sup> Section 124.507(b)(5) provides that “SBA determines whether a Participant is eligible for a specific 8(a) competitive requirement as of the date that the Participant submitted its initial offer which includes price.” Section 124.507(d) provides that “[a] concern that has completed its term of participation in the 8(a) BD program may be awarded a competitive 8(a) contract if it was a Participant eligible for award of the contract on the initial date specified for receipt of offers contained in the contract solicitation, and if it continues to meet all other applicable eligibility criteria.”

<sup>2</sup> SBA explains that, although MIRACORP was an 8(a) contractor at the time it received the PSS contract award, the solicitation that resulted in MIRACORP’s PSS contract was not restricted to 8(a) program participants, and did not include any Federal Acquisition Regulation (FAR) clauses that an agency would use in an 8(a) contract. See Solicitation No. FCO00CORP0000C, Refresh No. 32 (Aug. 29, 2018); SBA Comments at 1.

Under the bid protest provisions of the Competition in Contracting Act of 1984, only an interested party may protest a federal procurement. That is, a protester must be an actual or prospective bidder or offeror whose direct economic interest would be affected by the award of a contract or the failure to award a contract. 4 C.F.R. § 21.0(a)(1). Determining whether a party is interested involves consideration of a variety of factors, including the nature of the issues raised, the benefit of the relief sought by the protester, and the party's status in relation to the procurement. RELM Wireless Corp., B-405358, Oct. 7, 2011, 2011 CPD ¶ 211 at 2. Whether a protester is an interested party is determined by the nature of the issues raised and the direct or indirect benefit or relief sought. Id.

As mentioned above, MIRACORP has graduated from the 8(a) program and therefore, is no longer an 8(a) contractor eligible to receive contracts under the 8(a) program. Generally, a firm that is no longer eligible to receive 8(a) contracts is not an interested party to challenge an award under a solicitation set aside for 8(a) program participants. AVW Elec. Sys., Inc., B-252399, May 17, 1993, 93-1 CPD ¶ 386 at 2.

MIRACORP argues that it remains eligible for the delivery order at issue here, despite having graduated from the 8(a) program, because it was an 8(a) firm at the time it was initially awarded its PSS contract. The protester first points to 13 C.F.R. § 121.404, which the protester asserts, states that in a task order competition, a company's size is determined by SBA at the time the firm presents its offer for the multiple-award contract (such as the PSS contract), rather than at the time it responds to a request for quotation for a delivery order or task order under that contract. Protester Response (Nov. 16, 2018), at 2. We disagree.

Although this regulation states that SBA will determine size at the time of initial offer for multiple award contracts and orders, it clearly addresses instances where the multiple award contract (or discrete categories of the contract) were set aside. See, e.g., 13 C.F.R. § 121.404(a)(1)(i) ("SBA determines size at the time of initial offer . . . for a Multiple Award Contract based upon the size standard set forth in the solicitation for the Multiple Award Contract if a single NAICS code[ ] is assigned . . . . If a business is small at the time of offer for the Multiple Award Contract, it is small for each order issued against the contract, unless a contracting officer requests a new size certification in connection with a specific order."). This provision does not address, however, whether 8(a) status at the time of contract award establishes 8(a) eligibility for the duration of the contract when the multiple award contract was not reserved for 8(a) participants at the outset.

The protester next points to FAR § 19.804-6, which states in pertinent part:

- (a) Separate offers and acceptances are not required for individual orders under multiple-award contracts (including the Federal Supply Schedules managed by GSA, multi-agency contracts or Governmentwide acquisition contracts, or indefinite-delivery, indefinite-quantity (IDIQ) contracts) that have been set aside for exclusive competition among 8(a) contractors.

SBA's acceptance of the original contract is valid for the term of the contract. Offers and acceptances are required for individual orders under multiple-award contracts that have not been set aside for exclusive competition among 8(a) contractors.

The protester maintains that it remains eligible for an 8(a) award based on its interpretation of the above quoted language. The protester's reading emphasizes the following language: "Separate offers and acceptances are not required for individual orders under multiple-award contracts that have been set aside for exclusive competition among 8(a) contractors." FAR § 19.804-6 (emphasis added).

The SBA responds that, contrary to the protester's interpretation, the qualifying phrase "that have been set aside for exclusive competition among 8(a) contractors" applies to the word "contracts," not the word "orders." SBA Comments at 2. In this respect, the SBA notes that, "under the Rule of the Last Antecedent, 'a limiting clause or phrase . . . should ordinarily be read as modifying only the noun or phrase that it immediately follows.'" Id. (quoting Lockhart v. United States, 136 S.Ct. 958, 963 (2016)).

We think the SBA's interpretation here is reasonable. In this regard, the SBA's interpretation is consistent with its interpretation of its own regulations as discussed above, as well as the FAR clause in the RFQ that specified that vendors had to be certified by SBA as 8(a) program participants by quotation submission. See FAR clause 52.219-18. In addition, the SBA's interpretation is consistent with the last sentence of the above-quoted provision--"Offers and acceptances are required for individual orders under multiple-award contracts that have not been set aside for exclusive competition among 8(a) contractors." The protester's interpretation, on the other hand, is not consistent with the last sentence.

The record reflects that MIRACORP was not an 8(a) contractor at the time it submitted its quotation in response to the RFQ. Although MIRACORP held a PSS contract, its PSS contract was not reserved for 8(a) participants. In these circumstances, we conclude that the protester has not demonstrated that it would be eligible for award of this requirement under the 8(a) program, and therefore, the protester is not an interested party for the purposes of challenging DOE's evaluation and award determination.

The protest is dismissed.

Thomas H. Armstrong  
General Counsel